

**CONTRACT #7**  
**RFS # N/A**

**Tennessee Board of Regents**  
**University of Memphis**

**VENDOR:**  
**Wilson Conference Center**  
**Group, LLC**



## Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833  
(615) 366-4400 FAX (615) 366-4464 www.tbr.edu

March 22, 2007

RECEIVED

MAR 23 2007

FISCAL REVIEW

Ms. Leni S. Chick  
Fiscal Analyst  
Rachel Jackson Building, 8<sup>th</sup> Floor  
Nashville, TN 37243

Dear Ms. Chick:

Enclosed please find an Amendment between the University of Memphis and the Wilson Conference Center Group, LLC for professional hotel/conference center management and marketing services. Please note that the proposed term of this Amendment is July 1, 2007 through June 30, 2012.

Per Fiscal Review's request to see non-competitive agreements/amendments, and the amount and term involved with this amendment, we are submitting this for approval to the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory  
Director of Purchasing and Contracts

cc: Charles Manning  
Bob Adams  
William Mueller, UOM  
David Zettergren, UOM

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University  
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College  
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College  
Jackson State Community College • Motlow State Community College • Mississippi State Technical Community College  
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College  
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College  
The Tennessee Technology Centers

# REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that **must** be individually detailed or addressed **as required**. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	
2) State Agency Name :	TBR – University of Memphis
3) Service Caption :	
4) Proposed Contractor :	Wilson Conference Center Group, LLC
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	7/01/07
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	6/30/12
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	5% of Gross Rev., annually for 5 yrs. Net income is \$400K+ annually
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service
9) Description of Service to be Acquired :	Professional Hotel/Conference Center Management and Marketing Services for campus hotel and Fogelman Exec. Ctr.
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	The University requires experienced, qualified managerial, clerical and support personnel to operate the campus hotel and executive center that supports the institution's School of Hospitality and Resort Management academic programs and facilitates its conference center operations for executive instructional and public service programs.
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	Wilson Conference Center Group has provided the required services since 2002 in accordance with the existing management agreement that expires June 30, 2007. These services were previously acquired using a competitive bid process.
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)	C. Kemmons Wilson, Jr., President ; 8700 Trail Lake Dr. West; Suite 300; Memphis, TN 38125
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :	

Wilson Conference Center Group has approximately 35 years experience in managing hotel operations and has managed the campus hotel since 2002, in accordance with the existing agreement.

**14) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**15) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**16) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

Services were previously acquired using a competitive bid process. To do so again would create business interruptions, decreased business, and result in higher costs to the institution. See attached Sole Source Justification Summary.

**18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :**  
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

See attached Sole Source Justification Summary.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

3/22/07

Date

**University of Memphis**  
**Campus Hotel and Conference Center Management and Marketing Services**  
**Sole Source Justification Summary**  
*January, 2007*

1. Business Interruptions – Hotel Franchise. A change in management would necessitate new franchise negotiations and result in business interruptions and increased costs and decreased business.
  - a. The current Holiday Inn franchise is desired due to the historical significance and prominence to the area, which is the "birthplace" of the Holiday Inn name.
  - b. The current Holiday Inn franchise agreement is between the existing management company (WCCG) and Intercontinental Hotels Group. It is a 10-year agreement, with 5 years remaining on the current agreement.
  - c. If the University changes management companies, the new "manager", or the University, would have to apply for a new franchise. With a change of ownership or license renewal, the franchisor usually requires significant upgrades, estimated at a cost of several hundred thousand dollars. The University prefers to continue upgrades at a pace that does not impact business operations negatively and at a cost considerably less than what is required in a change of ownership.
2. Change in Management will Result in a Loss of Customer Base and Negatively Impact Operations. A management change in the hotel/conference center business will result in a decrease in business, while the new management team seeks to establish itself within the market and existing customer base.
  - a. It would be a financial "setback" to start with a new management team. Successful hotel/conference center service business results from developing and nurturing strong customer relationships. Campus hotel and conference facilities have already endured the early years of negative operating results developing an excellent reputation and corresponding customer base.
  - b. The existing management team has spend 5 years developing excellent business and personal relationships with nearly every major company, civic organization and governmental agency in the region. A new "manager" will have to start over, as we learned when management of the Executive Center changed from the University to the new management team.
3. Loss of Qualified Hotel/Resort Management Staff will Negatively Impact Facility Reputation and Customer Base. The sooner a new agreement is reached, the less likely we are to lose current, qualified staff, which impacts reputation and customer base.
  - a. Continuing the existing services contract will prevent a loss of qualified staff. As we get closer to the expiration of the existing agreement without an indication of renewal, some of our key people will bolt due to their own job security concerns, or productivity will be negatively impacted by the uncertainty.
  - b. While most line employees would be retained by a new "manager", many critical staff would be lost. Much has been invested in the past 5 years to put together the best management team of any hotel in the city. The University is extremely happy with the existing operations and does not want to lose any key staff. They are not only very competent hotel people but they are highly committed to this operation and The University.
4. Valuable University Partnership and Community Connection. The campus and neighborhood community endorse the management team and we do not have the time or resources to devote to working out new processes with a different management team.

University of Memphis  
Campus Hotel and Conference Center Management and Marketing Services  
Sole Source Justification Summary  
*January, 2007*

- a. The Kemmons Wilson family's donations and commitments to the University's School of Hospitality and Resort Management is significant and exemplifies community partnerships with higher education.
- b. It would take much time and effort to integrate new management systems and techniques into our existing university systems, at a time we can ill afford it with Banner Implementation in process.
- c. We estimate it would take up to three years for a new management team to develop strong ties with institutional faculty and staff, and the neighborhood community. This would negatively impact business operations.

## Justification for Sole Source (Purchases or Contracts)

[Click here for online help.](#)

Requisition Number: **B200757**

Initiator/Requestor: **David Zettergren**

Date: **1/30/07**

Department:

Vendor/Contractor: **Wilson Conference Center Group, LLC**

Finance Office

Amount to be Paid : **5% of Gross Revenue, as defined by Mgmt Agreement**

☐ Check here if federally funded grant

1. Description of service to be acquired:  
**Professional management and marketing services for the Kemmons Wilson School of Hospitality and Resort Management hotel and conference center and the Fogelman Executive Center.**
2. Explanation of the need for or requirement placed on the University to acquire the service:  
**The University requires experienced and qualified managerial, marketing, clerical, and support personnel to manage and operate the campus hotel and executive center that supports the institution's School of Hospitality and Resort Management academic programs and facilitates its conference center operations for executive instructional and public service programs.**
3. Name and address of the proposed contractor's principal owner(s):  
**Kemmons Wilson Companies; 8700 Trail Lake Dr. West, Suite 300; Memphis, TN 38125**
4. Evidence that the proposed contractor has experience in providing the same or similar service and evidence of the length of time the contractor has provided the same or similar service:  
**Kemmons Wilson Companies has a long history of managing hotel and conference center operations and has managed and operated the campus hotel and conference center since 2002, in accordance with the existing management agreement.**
5. Explanation of whether the service was ever bought by the University in the past, and if so, what method was used to acquire it and who was the contractor:  
**Kemmons Wilson Companies has provided the required services since 2002 in accordance with the existing management agreement that expires June 30, 2007. These services were previously bid and awarded to Kemmons Wilson Companies, Wilson Conference Center Group, LLC.**
6. Description of University's efforts to used existing University employees and resources or, in the alternative, to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiation):  
**Prior to the beginning of the current management agreement, the institution managed the hotel operations within the Fogelman Executive Center for many years with institutional employees at a substantial loss, not having the necessary, unique marketing and hotel/conference operating**

skills to operate efficiently and profitably. The addition of the campus hotel in 2002 and the related School of Hospitality and Resort Management student program, provided an even greater necessity for operating at the highest levels for instructional integrity, etc.

7. Justification of why the University should acquire the service through non-competitive negotiation: (Please check all that apply.) **Also, see attached summary.**

- ☒ The vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.
- ☐ The product or service is unique and easily established as one of a kind.
- ☒ The program requirements cannot be modified so that competitive products or services may be used.
- ☐ The product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.
- ☐ Item/s must be interchangeable or compatible with in-place items.
- ☒ The cost of conversion, including but not limited to disruption, re-training, and replacement precludes bidding competitively.
- ☐ The product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.  
For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the University. (F&A Rule 0620-3-3-03)
- ☐ Other justifications as approved by the Chancellor, President, or Director of Procurement Services, as appropriate.

Create & Print the form

Reset



**SECOND AMENDMENT TO  
MARKETING & MANAGEMENT AGREEMENT  
BETWEEN  
THE UNIVERSITY OF MEMPHIS  
AND  
WILSON CONFERENCE CENTER GROUP, LLC**

The following terms and conditions, as applicable, shall amend, modify, add or delete certain other terms and conditions to the above-referenced Agreement between THE UNIVERSITY OF MEMPHIS (hereinafter referred to as "University") and WILSON CONFERENCE CENTER GROUP, LLC (hereinafter referred to as "Wilson") Marketing and Management Agreement entered into for a term from January 1, 2002 through June 30, 2007, and executed February 28, 2002, and are incorporated thereunto by reference and made an integral part thereof. The terms and conditions of this Second Amendment shall control in the event of a conflict with any term or condition of the above-referenced Agreement as amended effective October 1, 2005. Those terms and conditions of the Agreement not amended herein shall remain in full force and effect.

**NOW THEREFORE**, the parties agree to modify and/or amend the Marketing and Management Agreement as follows:

1. In Provision 1., the term "January 1, 2002 through June 30, 2007" is hereby deleted and the following is substituted in lieu thereof: July 1, 2007 through June 30, 2012".
2. Provision 8a, is hereby deleted in its entirety and the following substituted in lieu thereof:  
"a. Holiday Inn."
3. In Provision 13.e., the year "2002-2003" is hereby deleted and the following is substituted in lieu thereof: "2007-2008".
4. In Provision 15., the statement "for any of the last three (3) fiscal years during the period beginning 7/1/04 and ending 6/30/07" is hereby deleted and the following is substituted in lieu thereof: "for any fiscal years during the period beginning 7/1/07 and ending 6/30/12".
5. In Provision 18.b., the following sentences are hereby deleted: "On the effective date of this Agreement, and upon the first day of each month thereafter, through June 30, 2002, University shall deposit the amount of deficit projected for each month, beginning with the month of January, 2002, as stated in the first approved Annual Budget, attached hereto as Exhibit 'B' to this Agreement. The parties expressly understand and agree that no such deposit shall be made for any projected deficits stated in Exhibit B for the months of November 2001 and December 2001."
6. Provisions 23., 24., 27., and 30.e., are hereby deleted in their entirety.

7. In Provision 25., the statement "except for items included in Wilson's initial \$300,000 gift as provided for in Wilson's Response to University's Request for Proposals no. B200757," is hereby deleted.
8. In Provision 38.c., the statement "1993 Dodge Van, manufacturer's V.I.N. 235WB35Z6RK538557" is hereby deleted and the following is substituted in lieu thereof: "2006 Isuzu Truck, V.I.N. #4KLB4B1U76J802980."

Subject to the terms and conditions set forth in this Second Amendment, the above-referenced original Agreement, as amended, between the parties is hereby ratified and confirmed.

**THE UNIVERSITY OF MEMPHIS**

**WILSON CONFERENCE CENTER GROUP, LLC**

By: \_\_\_\_\_  
Shirley C. Raines, President

By: \_\_\_\_\_  
C. Kemmons Wilson, Jr., President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**MARKETING AND MANAGEMENT AGREEMENT  
BETWEEN  
THE UNIVERSITY OF MEMPHIS  
AND  
WILSON CONFERENCE CENTER GROUP, LLC**

**THIS MARKETING AND MANAGEMENT AGREEMENT** (hereinafter referred to as "Agreement") by and between **The University of Memphis**, a public university within the Tennessee Board of Regents System (hereinafter referred to as "University"), and **Wilson Conference Center Group, LLC** (hereinafter referred to as "Wilson").

**WITNESSETH:**

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement in accordance with the provisions set forth herein:

1. **Term.** The term of this Agreement shall be January 1, 2002 through June 30, 2007. This Agreement shall be effective upon execution by all required parties. This Agreement may be renewed for an additional 5-year term, at expiration of this initial term, at the option of the University and with the consent of Wilson, provided that an exception to any applicable purchasing regulations is first obtained.
2. **Services.** Wilson agrees to provide professional marketing and management services for the Kemmons Wilson School of Hospitality and Resort Management hotel and conference facility and the Fogelman Executive Center (hereinafter referred to as "the Projects") in accordance with the terms of this Agreement and the contract documents.
3. **Contract Documents.** The contract documents consist of this Agreement, and the following documents, all of which are specifically incorporated by reference herein:
  - a. Any addenda and/or amendments to this Agreement hereafter executed.
  - b. Enumerated Responsibilities of University and Wilson, attached hereto as Exhibit 'A' to this Agreement;
  - c. Operating Budget for November 17, 2001 through June 30, 2002, attached hereto as Exhibit 'B' to this Agreement;
  - d. University's Request for Proposals no. B200757; and
  - e. Wilson's Response to University's Request for Proposals no. B200757 (includes all supporting materials submitted by Wilson in binder).

The express terms of this Agreement, its Exhibits and any amendments hereto, shall supercede any conflicting provisions among the contract documents. In the event of conflicting provisions not addressed by the express language of this Agreement, its Exhibits, and any amendments hereto, the documents shall be construed according to the following priority: Addenda and/or amendments (most recent with first priority), this Agreement; Exhibit 'A'; Exhibit 'B'; University's Request for Proposals no. B200757 and Wilson's Response to University's Request for Proposals no. B200757.

4. **Cyber Café.** The parties expressly acknowledge that the Cyber Café at the FedEx Technology Institute, is not included under this Agreement. The parties agree that if the University is unable to obtain a corporate sponsorship from a food services entity for operation of the Cyber Café during the term of this Agreement, Wilson shall have the option to operate the Cyber Café as a part of the Projects and under the same terms and conditions expressed herein for so long as this Agreement shall remain in effect.

5. **Signage.** Existing exterior signage at the Projects will be retained and Wilson will not erect or install any additional exterior signs during the term of this Agreement except with the written consent of the University, which shall not be unreasonably withheld. Interior signage also must be approved by University, which approval shall not be unreasonably withheld.
6. **Academic and other University Programs and Activities.** Wilson shall cooperate in good faith with the University regarding its academic and other University programs and activities in the Projects' facilities. "Academic and other University programs and activities" may include, without limitation, university classes; faculty, staff and/or academic program office space; executive/continuing education programs; computer laboratories; and/or any other academic use of space assigned by the University.
7. **Cooperation with University.** Wilson management shall meet as reasonably required and shall cooperate with the Dean and/or his or her designee and shall cooperate with other appropriate University officials and/or employees in the management, marketing, and operation of the Projects and their facilities. Wilson management representatives shall also attend University committee meetings as reasonably requested by the Dean or his/her representative. University may appoint an Advisory Committee to the Dean composed of faculty, staff and students. Wilson management shall meet with that committee as reasonably requested by the Dean or his/her representative and share information with them. Wilson further agrees to cooperate with University regarding its crime reporting obligations and to report all criminal activities, to its knowledge, occurring on the Projects' premises to University's Police Services.
8. **The Projects.** ~~Wilson will market and manage the Projects and all related operations, with the exception of academic and other University programs or activities. All costs of operations, replacements of equipment, furnishings, linens, kitchen utensils, operation supplies, etc. for the Projects, except for capital expenditures as defined in Provision 25 herein, costs associated with academic and other University programs and activities, or as otherwise set forth herein, shall be paid by Wilson out of the Annual Budget as provided for in Provision 13 herein.~~
  - a. **Wilson Hotel Facility.** Wilson Hotel facility is currently under construction, with an anticipated completion date of February 15, 2002.
  - b. **Fogelman Executive Center.**
9. **Hours of Operation.** University and Wilson shall cooperate in maintaining operation of the Projects 365 days a year, 24 hours each day. It is agreed that Wilson will adhere to its franchisor requirements in this regard.
10. **Basic Management Fee.** During the term of this Agreement, Wilson shall be paid an annual management fee (hereinafter referred to as the "Basic Management Fee") equal to five percent (5%) of the Gross Revenue (as defined herein).
11. **"Gross Revenue" Defined.** The term "Gross Revenue" shall mean all revenues from the operation of the Projects computed on an accrual basis consistently applied and from whatever source derived including, but not limited to, proceeds from the use of rooms (both sleeping and public rooms) and the sale of food and beverage services from all facilities, but in computing Gross Revenue, there shall be excluded (i) any gratuity or sales charges added to a customer's bill which are payable to hotel employees, and (ii) sales taxes and other taxes collected from customers for services received and which will be paid to the proper taxing authority. Further, in computing Gross Revenue, cancellation refunds and uncollectable accounts, provided Wilson has previously exercised due diligence in attempting to collect the accounts, shall reduce Gross Revenue in the period in which the refund is made or the account is deemed to be uncollectable.

12. **"Projects' Annual Adjusted Income" Defined.** The term "Projects' Annual Adjusted Income" shall mean Gross Revenue less the Basic Management Fee and less approved Operating Expenses for each fiscal year (as defined herein).
13. **"Annual Budget" Defined.** Wilson shall submit to University, for its approval at least ninety days prior to the beginning of each fiscal year (July 1 through June 30), a proposed Annual Budget, which shall constitute Wilson's best efforts to properly forecast Projects' revenues and expenses. Wilson and the University shall cooperate and use all reasonable efforts to insure that the actual costs of maintaining and operating the Projects do not exceed the estimated costs as stated in the Annual Budget, either in total or in any one accounting category. All accounting categories or line items to be used in such budget shall be prescribed in accordance with the most recent edition of the Uniform System of Accounts for Hotels and Motels. The proposed Annual Budget shall include:
- a. An estimated profit and loss statement in reasonable detail for each month and fiscal quarter of the ensuing fiscal year, including schedules of (i) hotel average daily room rates, (ii) occupancy percentage levels, (iii) allowances for gratuitous accommodations and services, (iv) sources and amounts of other income, (v) all operating expenses, including applicable University charges, to be incurred in operating the Projects, including as separate line items amounts budgeted for special service, central office services, repairs and maintenance, and expenditures for marketing, advertising and business promotions, (vi) other fixed costs and expenses to be incurred in operating the Projects, including all items included in taxes as defined in Provision 36 herein, rent, insurance, and additions to reserves, and the 'Projects' Annual Adjusted Income as defined herein. The Annual Budget shall include a renewal and replacement charge payable to University equal to a minimum of five percent (5%) of Gross Revenue.
  - b. A narrative description of Wilson's plans and goals, including a marketing plan, for operating the Projects for the ensuing fiscal year.
  - c. Detailed budget estimate for the ensuing fiscal year, on a quarterly basis, of expenditures for (i) operating equipment and (ii) revisions, alterations, rebuilding, replacements, additions and improvements in and to the Projects and their furnishings and equipment. Items that may constitute a "Capital Expenditure" as defined in Provision 25 of this Agreement shall not be included in the Annual Budget; however, detailed budget estimates for any planned Capital Expenditures for the ensuing fiscal year should be submitted along with the documents for the Annual Budget submitted pursuant to this section.
  - d. The documents submitted pursuant to this section, except for those documents involving Capital Expenditures as defined in Provision 25 herein, shall constitute the "Annual Budget," which shall be deemed approved unless University indicates its disapproval within sixty (60) days after receipt of the proposed Annual Budget. If University shall disapprove the proposed Annual Budget or any portion thereof, University shall specify with particularity the reasons for its disapproval and Wilson shall, after consultation with University, submit to University a new proposed Annual Budget or appropriate portion thereof within fourteen (14) days after the date of University's disapproval. The foregoing procedure shall be followed until the Annual Budget is fully approved by University, except that University shall have fourteen (14) days to respond to Wilson's resubmittal and Wilson shall have fourteen (14) days to respond to University's objection with a resubmittal. Until such time as the new proposed Annual Budget is fully approved by University, the portion approved shall become effective and the Annual Budget for the previous fiscal year shall remain in effect with respect to the portion of the proposed Annual Budget disapproved by University. The University and Wilson shall cooperate and exert good faith efforts in arriving at a mutually satisfactory Annual Budget.

- e. Wilson shall submit its proposed Annual Budget prepared in conformance with this section for each fiscal year, beginning with fiscal year 2002-2003, no later than March 31<sup>st</sup> preceding the fiscal year beginning July 1<sup>st</sup>.
14. **"Operating Expenses" Defined.** Except as otherwise herein provided, Wilson shall, in behalf of the Projects, from University approved Annual Budget funds, pay all Operating Expenses, which shall include, without limitation, compensation of hotel and food services personnel, including salaries, wages, payroll taxes, employee benefits and/or severance payments, costs of laundry, cleaning supplies, uniforms, front desk materials, reservation service fees, guest room supplies, any applicable license, franchise, and/or reservation fees, advertising, marketing, travel agent's commissions, credit card charges, accounting fees, reserve funds for bad debts, operation and maintenance costs of the Projects' facilities, including, without limitation, custodial services, costs for repair of the Projects' facilities, annual in-depth cleaning, grounds care, utilities, and HVAC, state assessments for insurance and liability coverage, all University charges for services provided by the University and not otherwise paid directly by Wilson to a vendor, and the Projects' renewal and replacement charge(s).
15. **Incentive Fee.** If the amount of Gross Revenue for any of the last three (3) fiscal years during the period beginning 7/1/04 and ending 6/30/07 exceeds, respectively, the total amount of the Operating Expenses of the Projects and the amount of the Basic Management Fee, respectively, paid to Wilson under this Agreement, Wilson shall, for any such respective year, earn an incentive fee equal to 15% of the Projects' Annual Adjusted Income (as defined herein). Payment of said Incentive Fee shall be made within thirty (30) days of receipt by University of Wilson's fiscal year end report.
16. **Deficit and Rebate of Percentage of Basic Management Fee.** If the Operating Expenses, exclusive of the Projects' renewal and replacement charge(s), during any fiscal year, shall exceed the amount of Gross Revenue during the same fiscal year, Wilson agrees to rebate a portion of the amount of the Basic Management Fee equal to two percent (2%) of the amount of the "Gross Revenue," or the amount of deficit, whichever amount shall be less.
17. **Marketing and Advertising.** Wilson shall prepare appropriate advertising and promotional plans to be used to further Projects' revenues, subject to the limits of the approved Annual Budget. Wilson shall also prepare and submit for University's approval as part of the proposed Annual Budget, a proposed marketing plan for the Projects, which shall include Wilson's overall market assessment, proposed revenue goals, sales and marketing strategies, advertising, media and business promotion plans, room rates, rack and other discounted rates and such other information as University shall reasonably require (the "Marketing Plan"). The Marketing Plan shall be subject to University's review, revision and approval from time to time and all expenditures shall be made in accordance therewith.
18. **Deposit of Project Cash and Operating Deficits.**
- a. Project Cash received by Wilson shall be deposited daily by Wilson into a bank account established, accessed, and maintained by Wilson. Periodically, from funds on deposit in said account, Wilson shall withdraw amounts in payment of the Basic Management Fee, and the Operating Expenses of the Projects.
- b. ~~On the effective date of this Agreement, and upon the first day of each month thereafter, through June 30, 2002, University shall deposit the amount of deficit projected for each month, beginning with the month of January, 2002, as stated in the first approved Annual Budget, attached hereto as Exhibit B<sup>2</sup> to this Agreement. The parties expressly understand and agree that no such deposit shall be made for any projected deficits stated in Exhibit B for the months of November 2001 and December 2001. At the end of each month and upon receipt of the monthly report required by Provision 19 herein, University shall deposit within three (3) business days an amount sufficient to cover any additional operating deficit for the previous month provided that the expenditures that~~

constitute such deficit were incurred in support of the operation of the Projects and are consistent with the terms of Provision 14 herein. Any projected deficits contained in an approved Annual Budget for a subsequent fiscal year during the term of this Agreement shall be handled in accordance with the terms of this Provision 18(b).

19. **Monthly Report.** On or before the 30<sup>th</sup> day after the close of each month, Wilson shall provide to University a detailed, written report of total Gross Revenues, adjustments to gross sales, account deposits and payments of management fees and operating expenses.
20. **Records.** Wilson shall maintain proper internal accounting controls and keep full, complete, and proper books, records, and accounts of the Gross Revenue (as defined herein), both for cash and on credit; said books, records, and accounts, including any sales or other tax reports that Wilson may be required to furnish to any government or governmental agency, shall at all reasonable times be open to the inspection of the University, the Comptroller of Treasury of the State of Tennessee, or their designee for as long as such records exist but in no event less than three (3) years following the termination or expiration of the management agreement.
21. **Annual Statement.** Wilson shall submit an audited annual statement certifying the accuracy of the amounts of Gross Revenue and Operating Expenses for the period ending in June of each year. The statement shall be due no later than October 1<sup>st</sup> of the same year.
22. **Management and Staff.** Wilson shall make all reasonable efforts to staff the Projects with qualified managerial, marketing, clerical, and other support personnel. Wilson shall pay, as an operating expense of the Projects, all wages and benefits and accept all lawfully imposed employer liabilities for all Wilson's employees, including its part-time employees. Wilson shall be responsible for appropriate training of its employees consistent with the reasonable best interests of the Projects.
  - a. The University reserves the right to review the credentials and qualifications of all personnel hired by Wilson for management positions and to approve any portion of the salary paid to such personnel as a part of the Annual Budget. Provided, however, said review or approval of such salary, shall not be unreasonably withheld nor inconsistent with similar equivalent industry level comparisons for such management positions. The University reserves the right to consult with Wilson on all significant personnel matters and to make recommendations in this regard as reasonably appropriate.
  - b. Wilson's employees for the Project shall be informed that they are not employees of the University but they are expected to adhere to University policy and regulations, which may be accessed on University's web site and as stated in the University's Employee Handbook, while on University premises, including but not limited to, regulations governing access to buildings, personal conduct, illegal possession of firearms, alcohol, and prescribed substances or articles, parking, and traffic.
  - c. The University may request removal from the campus of any employee of Wilson if the employee's action violates University policy and procedure, and such requests shall not be unreasonably denied. The University retains the right to require removal from the campus of any employee of Wilson whose presence or actions constitutes a threat to public health and/or safety. Such removals will be accomplished through Wilson's officials.
  - d. Wilson will provide and maintain a staff suitable to provide Project services to the University's reasonable satisfaction. Personnel must be adequately trained to have sufficient knowledge to operate and provide the services for which they are employed in order to facilitate and promote the reasonable best interests of the Projects.

- e. Wilson shall submit part-time employment opportunities suitable for students to University's student employment office and will exert reasonable, good faith efforts to employ students in such positions.
  - f. Employees of Wilson working at the University and appropriate associated management personnel, as approved by the University, will be eligible to purchase University parking permits on the same basis as University employees, except that automatic payroll deduction will not be available. Wilson shall submit the names of those employees who desire parking permits and other appropriate information as requested by University. Wilson may pay the parking fees on behalf of its employees, but such fees shall not be charged as an Operating Expense. Wilson shall be responsible for all fines not paid by its own employees and management personnel employed at the Project, provided notice thereof has been timely given to Wilson in writing by University. Wilson agrees that such fines shall not be paid as an Operating Expense, and that Wilson's employees shall not use parking spaces assigned to the Projects.
23. **Current University employees associated with the Fogelman Executive Center.** Wilson shall employ all current employees of the Fogelman Executive Center (FEC) in accordance with the terms of Section 12 of University's RFP no. B200757. The parties understand and agree that Wilson shall employ Wilson Hotel Management Company, Inc. as its subcontractor in hiring current Fogelman Executive Center Employees and in providing future employees for the Projects pursuant to this Agreement; provided however, that Wilson retains final responsibility for compliance with the terms of Section 12 of the RFP regarding current employees. University and Wilson agree that nothing in Section 12 of said RFP guarantees any specific salary and/or benefits to current Fogelman Executive Center Employees hired by Wilson pursuant to this Agreement beyond the three (3) month fair trial period provided for in Section 12.
24. **Additional Gift:** The parties expressly acknowledge that the gift to the Projects from Wilson as provided for in Wilson's Response to University's Request for Proposals no. B200757, which is identified as a "Goodwill Contribution" in the amount of three hundred thousand dollars (\$300,000) in Section 6 of the Proposal Binder, will not be used to cover cost for items that would otherwise be included in the gift of the Wilson hotel facility to the University pursuant to the December, 2000 agreement entitled "Agreement between University of Memphis/Tennessee Board of Regents and Friends of C. Kemmons Wilson School of Hospitality and Resort Management, Inc., SBC Project No. 166/007-007-01-99." The parties acknowledge that the gift will be used to cover the costs for items such as those identified in the Proposal in Section 6 as "Hotel Pre-Opening Costs and WCCG Capital Commitment."
25. **Capital Expenditures, Renovations, Alterations, etc. for Project facilities.**
- University shall be responsible for all Capital Expenditures, except for items included in Wilson's initial \$300,000 gift as provided for in Wilson's Response to University's Request for Proposals no. B200757, and renovations, alterations, changes or modifications involving Structural Items at the Projects unless the Parties first expressly agree otherwise in writing. The costs of such services, except for Capital Expenditures, shall be charged to the Projects as an Operating Expense. Wilson agrees that if it undertakes such renovations, alterations, changes or modifications involving structural items as defined herein at the Projects' facilities pursuant to such an express written agreement, all such renovations, alterations, changes or modifications involving structural items must comply with all applicable University, state and federal requirements.
- a. "Capital Expenditures" shall be defined as those assets of a permanent nature (for example, furniture, fixtures and/or equipment and Structural Items) costing \$5,000 or more required for the usual and customary conduct of business, which have a useful life of greater than one year.
  - b. "Structural Items" shall be defined as any modifications to the original building, building



systems, or building improvements identified in designs or plans previously approved by appropriate State authorities costing \$5,000 or more.

**26. Maintenance: Furnishings, Equipment, Fixtures and Services.**

- a. Wilson, in behalf of the Projects, and as an Operating Expense, shall provide for preventive maintenance and routine repairs, costing less than \$5,000, of all furniture, fixtures, equipment, etc. furnished by University. Appropriate maintenance contracts, including elevator maintenance contracts, shall be similarly maintained and expensed; provided however, that any single contract involving a total cost of more than \$5,000 in any fiscal year, is subject to prior written approval by University.
- b. Wilson and University, in behalf of the Projects, and as an Operating Expense, shall also have responsibility for maintenance and performance of services as specified in Exhibit 'A' to this Agreement.

**27. Inventory of Furnishings, Equipment and Fixtures.** ~~An inventory of all furnishings, equipment, and fixtures that shall be under the control of Wilson at the Fogelman Executive Center during the term of this Agreement shall be taken jointly in the presence of representatives of the University and Wilson within thirty days of the effective date of this Agreement term. Inventories of the same items shall be completed under the same terms within thirty days of the first day of operation for the Kemmons Wilson School of Hospitality and Resort Management hotel. Similar inventories shall be undertaken sometime during the period between July 1, 2004 and December 31, 2004.~~

**28. Surrender of Projects' Premises and Furnishings, Fixtures, Etc:**

- a. Upon expiration or termination of this Agreement, Wilson shall promptly cease operation and vacate the Projects premises and deliver the same to the University in the same condition as at the time Wilson took possession, reasonable wear and tear excepted. Items covered by insurance, or losses due to acts of nature, war, terrorism, theft, vandalism, are also excepted, provided such losses are not due to Wilson's negligence. Any or all alterations, additions, and improvements to the premises shall not be removed by Wilson, the same being a part of the premises.
- b. Wilson shall leave at the Projects at the expiration or on termination of this Agreement, all Projects' furnishings, including but not limited to, furniture, equipment, fixtures, etc., furnished by the University and any replacements of such equipment, which Wilson shall have purchased for the Projects as an Operating Expense, in the condition in which received, except for ordinary wear and tear, modifications approved by University; items covered by insurance; items lost or damaged due to acts of nature, war, theft, vandalism, provided such losses are not due to Wilson's negligence; or items lost or damaged as a result of the University's negligence.
- c. Wilson shall have the right, however, upon termination of this Agreement to remove any furniture, furnishings, equipment, trade fixtures, and other personal property of Wilson placed in or upon the Projects' premises and that Wilson purchased from its own funds and not as an Operating Expense, provided that such purchase and/or installation are not a part of the gift of the Wilson hotel facility to the University pursuant to the December, 2000 agreement entitled "Agreement between University of Memphis/Tennessee Board of Regents and Friends of C. Kemmons Wilson School of Hospitality and Resort Management, Inc., SBC Project No. 166/007-007-01-99" and/or are not a part of Wilson's additional \$300,000 gift as provided for in Wilson's Response to University's Request for Proposals no. B200757, and such purchase and/or installation occurred after the date on which the gifts were delivered and completed. Those items shall be removed within fifteen (15) days of termination or expiration of this Agreement. Provided further, Wilson shall, at its sole expense, repair any damage to the Projects' premises caused solely by such removal.

## **29. Purchasing, Delivery, And Storage.**

- a. Wilson shall make all Projects' purchases as an Operating Expense for the benefit of the Projects in such manner as to avoid any contractual obligation of the University; provided, however, that upon mutual agreement of the parties, goods and services for the Projects may be purchased by University on behalf of the Projects and charged as an Operating Expense.
- b. Delivery of merchandise to and from the Projects' facilities will be at Projects' Annual Budget risk and expense. Wilson shall promptly unload and store any shipments delivered to University premises.

## **30. Termination.**

- a. If Wilson fails to perform under the terms of this Agreement, including but not limited to, failure to operate in a commercially reasonable manner and in the reasonable best interests of the University, its faculty, students, and staff, the University shall provide Wilson with written notice of the specific default and/or failure to perform. If Wilson fails to correct the default within thirty (30) days from receipt of the written notice of default, the University may terminate this Agreement upon sixty (60) days written notice of intent to terminate.
- b. University may terminate this Agreement upon fifteen days written notice in the event that Wilson fails to pay, in a commercially reasonable manner, Operating Expenses and/or other financial obligations of the Projects incurred by Wilson and funded by University, and Wilson fails to correct any such nonpayment within same fifteen days. Financial obligations for which there are insufficient funds on deposit for more than three business days following Wilson's submission of the monthly report as provided in Provision 19 of this Agreement are specifically excepted from this provision unless University deposits the necessary funds during the next payment cycle and those same obligations remain unpaid during the same cycle in which University made such deposit. Upon termination pursuant to this Provision 30(b.), University may require Wilson to surrender the Projects' premises in conformance with Provision 28 herein.
- c. University may terminate this Agreement at the end of any fiscal year (June 30th) in the event that sufficient funds are not appropriated by the general assembly and/or budgeted for continuation of this Agreement. Upon such termination, Wilson shall be entitled to receive, upon its submission of sufficient documentation to University, an amount equal to Wilson's actual costs and/or expenses arising out of the termination of the Agreement prior to its expiration date.
- d. Wilson may terminate this Agreement upon fifteen days notice in the event the University fails to comply with Provision 18 of this Agreement, and fails to correct any deficiency in complying with Provision 18 within same fifteen days. If University substantially interferes with Wilson's performance of this Agreement, Wilson shall provide University with written notice of the specific acts of substantial interference. If University fails to correct the substantial interference within thirty (30) days from receipt of the written notice of specific acts of substantial interference, Wilson may terminate this Agreement upon sixty (60) days written notice of intent to terminate. Upon such termination, Wilson shall be entitled to receive, upon its submission of sufficient documentation to University, an amount equal to Wilson's actual costs and/or expenses arising out of the termination of the Agreement prior to its expiration date.
- e. The parties expressly agree that if as of June 30, 2004, the total amount of deficit funding deposited by University pursuant to Provision 18 herein has exceeded the sum of two million dollars (\$2,000,000), the University may terminate this Agreement upon ninety (90 days) notice and shall be relieved from any further obligation, responsibility, or liability under this Agreement; provided, however, that University shall not take action pursuant to this provision 30(e) until after it has provided all necessary and appropriate information to, and consulted with, the Hotel Advisory Board regarding any proposed termination pursuant to this provision. The parties

further agree that general University expense allocations charged to the project shall be reasonable and comparable to market costs for the same services. In the event that such expense allocations exceed comparable market costs for the same services, only comparable market costs may be used in calculating the total deficit for purposes of determining whether such amount has exceeded the amount of two million dollars (\$2,000,000).

- f. Nothing in this Provision 30 shall relieve either party of liability for any damages sustained by virtue of the other party's breach of this Agreement.

31. **Prior Contracts.** Contracts with individual guests or groups for future use of the facilities entered into by University and made known to Wilson, all prior to the effective date of the management contract must be honored. Similarly, any contracts with individual guests or groups for future use of the facilities entered into by Wilson and made known to University at or before termination or expiration of management contract must be honored.
32. **Assignment Or Subcontract.** Wilson may not assign or subcontract in whole or in part its obligations under this management contract without prior written consent of the University. Assignees must have been eligible to bid on the Management Agreement as a condition of University's consent.
33. **Audit.** The University reserves the right to perform periodic audits of Wilson's operation to determine its compliance with this Agreement.
34. **General Property Risks.** The University is responsible only for general property risks of accidental loss to the building, furniture, file cabinets, display equipment, and/or other equipment or furnishings owned by the University and provided to Wilson under the Agreement, except when caused by Wilson's negligence. Wilson shall be responsible for all risks to its stock, fixtures, furnishings, equipment and all other contents owned by Wilson, except when caused by University's negligence.
35. **Liens or Encumbrances.** Wilson shall not cause the premises or any improvements thereon to become subject to any lien, charge or encumbrance whatsoever without the express written consent of the University and the State of Tennessee.
36. **Independent Contractor.** Wilson shall be deemed to be an independent contractor and its employees shall not, under any circumstances, be deemed employees or agents of the University or the State of Tennessee.
37. **Permits, Licenses, Taxes And Certificate Of Authority.** Wilson shall, as an Operating Expense, use its best efforts to procure, for the benefit of the Projects, all permits and licenses as required by law, and will abide by all applicable laws, regulations and ordinances of all federal, state and local governments under which this Agreement will be performed, including but not limited to, passing all health inspections by the Memphis and Shelby County Health Department and strictly complying with all laws and regulations associated with any future license(s) for the sale and/or consumption of alcoholic beverages in the Projects. In all such matters, Wilson and the University shall cooperate with each other and applicable governmental agencies in procuring any such licenses and permits and complying with all applicable governmental requirements relative thereto. The parties expressly acknowledge that in addition to any required licenses and/or permits, approval of the Tennessee Board of Regents must be obtained before alcohol may be sold on the premises of the Projects. Wilson shall be responsible for paying, as an Operating Expense, any and all taxes and assessments attributable to the operation of the Projects including, but not limited to, payroll and personal property taxes, franchise taxes, and sales and use taxes, except for such taxes from which the University is legally exempt. The parties expressly agree that Wilson shall be responsible for payment of its own corporate and/or partnership or other business entity income taxes, and that such taxes shall not be paid as an Operating Expense or otherwise charged to the University.

**38. Insurance:**

- a. Workers' Compensation, Comprehensive General Liability. ~~Wilson must provide Workers' Compensation Coverage for all its employees as required by the Tennessee Worker's Compensation Law. In addition, Wilson must secure a Comprehensive General Liability and Umbrella Liability Policies providing minimum coverages of \$3,000,000 per occurrence/\$3,000,000 annual aggregate Combined Single Limits for Bodily Injury and Property Damage Liability. The policy should also provide Fire Legal Liability with limits of at least \$100,000. Wilson must also secure Automobile Liability Insurance of at least \$300,000 per occurrence/\$3,000,000 annual aggregate combined limits for bodily injury and property damage liability. The University should be added as an additional insured on all liability policies. The enumeration of the kinds and amounts of insurance shall not abridge, diminish, or affect Wilson's legal responsibilities for the consequences or accidents arising out of or resulting from the services of Wilson under this Agreement.~~
  - b. Assessment for Cost of State's Coverage. The State of Tennessee through the state insurance program and the State's Board of Claims and Claims Commission provides property and general risk and liability coverage for the Projects and its contents. The cost of such insurance assessed against the University shall be charged to the Projects and paid as an Operating Expense.
  - c. University-owned Vehicle. In addition to the other insurance requirements contained in this Provision 37, Wilson agrees to provide vehicle insurance for that certain 1993 Dodge Van, manufacturer's V.I.N. 235WB35Z6RK538557, owned by University and furnished to Wilson for its business use related to the Projects, with coverage limits of at least \$1,000,000, \$250 Deductible Comprehensive and \$500 Deductible Collision. A Certificate of Insurance naming University as an additional insured as to this vehicle only will be furnished to the University by Wilson's insurer during term of use of said vehicle by Wilson. ~~Only drivers approved by Wilson's insurer shall be permitted to operate said vehicle on behalf of Wilson.~~
39. Indemnity. Wilson shall indemnify and hold harmless the University, the Tennessee Board of Regents, the State of Tennessee and their officers, authorized agents and employees, individually and collectively, against and from all claims or demands by or on behalf of any person, firm, corporation or governmental authority, arising out of, attributable to or in connection with Wilson's negligent use, occupation, possession, conduct or management of the Projects facilities, including all claims for injury or death to persons or damage to property arising out of the negligence of Wilson, its subcontractors, and their agents, servants and employees. Wilson also covenants and agrees, at its sole cost and expense, to hold harmless the University, the Tennessee Board of Regents, the State of Tennessee and their officers, authorized agents and employees, individually and collectively, from and against all judgments, costs, reasonable counsel fees, expenses and liabilities incurred in connection with any such claim and any action or proceeding brought thereon, and in case any action is brought against the University, the Tennessee Board of Regents, the State of Tennessee and their officers, authorized agents and employees, individually and collectively, by reason of any such claim. Wilson upon notice from University, will resist and defend such action or proceeding by qualified counsel, but only in connection with Wilson's negligence. The Attorney General of the State of Tennessee reserves the right, as to their respective interests, to approve of any handling of a claim or legal action by Wilson naming the University, the Tennessee Board of Regents, the State of Tennessee or their employees, individually and collectively. The University agrees to promptly notify Wilson of any claims for which it seeks indemnity and to cooperate with Wilson in the investigation, defense, and settlement of all such claims. ~~Further, Wilson being an independent contractor, shall otherwise protect and hold harmless the University from any and all liability not specifically provided for in this Agreement, caused by Wilson's negligence.~~
40. Equal Employment Opportunity, Affirmative Action. Wilson and its subcontractors are required to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments

of 1972, Section 503/504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990, and 38 U.S.C. Section 4212, along with the related regulations and reporting requirements of each. Wilson will require all subcontractors to agree that they will not discriminate against any individual, including but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, national origin or status as a disabled or Vietnam era veteran. Wilson agrees to take affirmative action to ensure that applicants are employed and treated during their employment without regard to their race, religion, creed, color, sex, disability, national origin or status as a disabled or Vietnam era veteran. Such action includes, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

41. **Title VI Survey.** Wilson shall complete a Tennessee Board of Regents ("TBR") Annual Title VI Survey and/or cooperate with a TBR Title VI Compliance Audit if it receives federal funds under any contract with University.
42. **Consent and/or Approval:** Whenever the consent or approval of University is required or permitted hereunder, such consent or approval must be given in writing by the University's President or her official designee. University agrees to respond to requests for consent and/or approval within a commercially reasonable time period. Wilson's use of University's name in advertising, publicity, or other promotional activities is expressly prohibited unless required by law or approved by University, unless used in connection with any singular promotion of the Projects, and such use has been previously approved as a part of the Marketing Plan submitted as a part of the Annual Budget process.
43. **Contract Integrity.** Wilson hereby agrees and covenants that no money or other item of value has been or shall ever be paid directly or indirectly to any officer or employee of the University and/or the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Wilson in connection with any work contemplated or performed relative to this Agreement, except as otherwise provided herein.
44. **Contract Modification; No Waiver.** This Agreement may be modified only by written amendment executed by all parties hereto. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.
45. **Applicable Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Tennessee as the site for performance of this Agreement without regard to its conflict of laws. Wilson shall comply with all applicable federal, state and local laws, and regulations in connection with its activities pursuant to this Agreement. Any and all claims against the State of Tennessee, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee. Damages recoverable against the State of Tennessee shall be limited to claims paid by the Board of Claims or the Claims Commission pursuant to Tennessee law.
46. **Severability and/or Unenforceability of Provisions.** If any provision of this Agreement shall be determined to be contrary to law, void, invalid, unenforceable or illegal for any reason by a body having valid jurisdiction over the parties and/or the action pursuant to this Agreement, it shall be ineffective only to the extent of such determination and the validity and enforceability of all the remaining provisions shall not be affected thereby.
47. **Entire Agreement:** This Agreement and the contract documents, which includes all exhibits, constitutes the entire understanding between the parties and all other prior negotiations, representations, and understandings are superseded hereby. Neither party was induced to enter into this Agreement by any statements or representations not contained in this Agreement. Neither party

shall have any authority, and neither party shall represent that it has authority, to assume or create any obligation, express or implied, on behalf of the other party, except as provided in this Agreement. Each party is an independent contractor, and this Agreement shall not be construed as creating a partnership, joint venture or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.

48. **Approval and Execution:** This Agreement shall not be binding upon the parties until it is approved and executed by the University's President or official designee, and the Tennessee Board of Regents, as appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterpart original by their duly authorized representatives on the dates indicated below.

THE UNIVERSITY OF MEMPHIS

By: Shirley C. Raines  
Shirley C. Raines, President

Date: 2/21/02

WILSON CONFERENCE CENTER  
GROUP, LLC

By: C. Kemmons Wilson, Jr.  
C. Kemmons Wilson, Jr., President

Date: 2/20/02

TENNESSEE BOARD OF REGENTS

By: Charles R. Manning  
Charles R. Manning, Chancellor

Date: 2-28-02

## **EXHIBIT 'A'**

### **Marketing and Management Agreement between The University of Memphis and Wilson Conference Center Group, LLC**

In addition to the obligations and duties set forth in the Agreement, the parties shall also have the following responsibilities:

#### **1. UNIVERSITY'S RESPONSIBILITIES.**

- 1.1 The University shall provide through its systems: heat, light, water, electricity, chilled water, and sewer service, fire and smoke alarms, external security; and snow removal as is reasonably required for operation of the Projects. The University shall maintain these services and make every reasonable effort to avoid their disruption. In the event any service must be interrupted for repair or modification, the University shall provide to Wilson's representative as much advance notice as possible. In the event of any such interruption or any disruption of services, the University shall take such steps as it reasonably can to promptly restore them.
- 1.2 The University shall provide the Projects with the use of existing furniture, file cabinets, display equipment, safes, office machines, hotel rooms reservation and conference center packages, and similar items that currently are held by the Fogelman Executive Center and are owned by the University. University shall also provide use of all similar items provided to the University as a part of the gift of the Wilson hotel facility as identified in Provision 28(c) of the Agreement.
- 1.3 Consistent with the terms of Provisions 25 and 26 of the Agreement, University shall provide structural repairs to, and maintenance of, the building and fixed equipment, including attached lighting fixtures and any air conditioning and ventilating equipment required for the Projects whenever the cost of such repair or maintenance shall be \$5,000 or more. The costs of these services shall be charged to the Projects as a Capital Expenditure. Wilson may secure such repair and/or maintenance services upon prior written approval from University, including approval of the proposed services and the firm secured by Wilson to provide such services; provided, however, in the event of an emergency as determined by Wilson, Wilson may proceed with securing any such repair and/or maintenance necessary to prevent further damage or harm without University approval. Wilson shall notify University as soon as possible whenever such emergency repair and/or maintenance is undertaken.
- 1.4 The University shall provide access to University intra-campus mail without charge and to University bulletin boards for appropriate notices relating to the Projects in accordance with University policy.
- 1.5 The University shall provide access to the University telephone system, electronic services (i.e. web and e-mail access), and CATV system at the same monthly line, equipment charges, and rates billed to University departments plus any applicable taxes. All such services provided by University, including copying, printing, etc., shall be billed at departmental rates as an Operating Expense.

## 2. WILSON'S RESPONSIBILITIES.

- 2.1 Consistent with the terms Provisions 25 and 26 of the Agreement, Wilson shall have responsibility, as an Operating Expense, for operation and maintenance of the project facilities, including, without limitation, custodial services, costs for routine repairs of the Projects' facilities, annual in-depth cleaning, grounds care, and HVAC, all University charges for services provided by the University and not otherwise paid directly by Wilson to a vendor, and University renewal and replacement charge(s).
- 2.2 Wilson shall, as an Operating Expense, keep clean the floors, stairways, walls, fixtures, furniture, and equipment. In performing cleaning and maintenance, Wilson shall comply with the requirements of the University's "Custodial Services Cleaning Standards and Frequencies".
- 2.3 Wilson shall conform to fire, safety, traffic, parking and other University or statutory regulations as imposed on University departments and activities and other contractual services on University premises and their personnel.
- 2.4 Wilson shall pay, as an operating expense, the costs of any services provided by the University at Wilson's request, including, but not limited to, telephone and toll charges; CATV services; security surveillance or the like within the facilities; maintenance, mailing, duplicating, or transportation services. Wilson shall be billed at the same internal rate charges applicable to other University departments, and payment for such services shall be due within thirty (30) days of receipt of University's invoice.
- 2.5 Wilson will cooperate with the University's energy conservation coordinator regarding any building in which there is a Wilson operation, and shall comply with the standards for heating, cooling and lighting applicable to other University departments and/or facilities.
- 2.6 Wilson shall secure the University's approval in writing before making any physical modifications to install any Wilson owned equipment. Such equipment will remain the property of Wilson and may be removed by it upon expiration or termination of the contract, provided that such equipment is not a part of the gift of the Wilson hotel facility as outlined in Provision 28(c) of the Agreement. Wilson shall be responsible for restoring the facilities to their original condition upon removal of such equipment.
- 2.7 Wilson shall handle disposal of trash in accordance with University guidelines, including, but not limited to, breaking down boxes, using trash bags, placing trash in appropriate dumpsters, recycling programs, etc.
- 2.8 Wilson shall bear the cost, as an Operating Expense, for rekeying all interior doors in the Fogelman Executive Center related to Projects operations and resetting any safe combinations. Wilson may not make lock changes to any exterior doors in the Fogelman Executive Center, but will be provided appropriate keys at its cost. The new Projects' facilities shall also be part of the University's key system. University, at its option, may, as an Operating Expense, require Wilson to re-key the facility for return to the University's master key system prior to termination of the contract.



2.9 Wilson shall cooperate in good faith with the University in design and construction of a web site for the Projects. The cost of the design and construction of the web site and all on-going operation and/or maintenance expense associated with the site shall be charged to the Projects as an Operating Expense.

2.10 Security.

- a. Wilson shall consult and cooperate with appropriate University officials concerning questions of enforcement of regulations, and internal security and theft control in the Projects' facilities. Wilson shall summon public emergency services through the University's Public Safety dispatcher, except in emergency situations. If a student of the University is suspected of theft related to Wilson's operation of the Projects is to be arrested by public authorities and/or prosecuted, and such information is made known to Wilson by said authority, Wilson will advise the Dean of Students of the matter.
- b. Wilson shall control all keys to the Projects premises except that a copy of each key to the Projects shall provided to the University's Supervisors of Maintenance and to the Office of Public Safety in order to facilitate admission for purposes of authorized University maintenance and/or public safety personnel as may be necessary to monitor or inspect alarms, provide for building and property security, and to provide emergency utility service. It is understood that any such entry on the premises without prior knowledge of Wilson's representative shall be in emergency situations only and that each occasion shall be immediately reported to Wilson's representative.
- c. Wilson shall provide the University a list of Wilson personnel having keys to the Projects' facilities and premises, including addresses and telephone numbers. University Public Safety personnel and maintenance supervisors shall call Wilson in order to gain access to the facilities except when an emergency situation clearly precludes this.
- d. The University will provide prompt and reasonable support to Wilson in its efforts to assure the security of its premises and stock. If Wilson believes the measures taken by the University for the resolution of any security problem are insufficient, Wilson shall have the right to present its views and recommendations to the Vice President for Business and Finance who shall not unreasonably deny its requests.